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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

KFX MEDICAL CORPORATION, a
Delaware corporation,

Plaintiff and Counterdefendant,

v.

ARTHREX, INCORPORATED, a
Delaware corporation,

Defendant and Counterclaimant.

) Case no. 11cv1698 DMS (BLM)

) **DECLARATION OF SEAN M.**
) **MURRAY IN SUPPORT OF**
) **PLAINTIFF'S MOTION FOR**
) **SUMMARY JUDGMENT OF NO**
) **INEQUITABLE CONDUCT IN**
) **CONNECTION WITH U.S.**
) **PATENT NOS. 8,100,942 &**
) **8,109,969**

) Date: June 28, 2013

) Time: 1:30 p.m.

) Courtroom 13A

) Honorable Dana M. Sabraw

1 I, Sean M. Murray, declare and state as follows:

2 I am a partner in the law firm of Knobbe Martens Olson & Bear, LLP,
3 and I am counsel of record for KFx Medical Corporation (“KFx”) in this
4 action. I submit this declaration in support of Plaintiff’s Motion for Summary
5 Judgment of No Inequitable Conduct in Connection with U.S. Patent Nos.
6 8,100,942 & 8,109,969. The following statements are based on my personal
7 knowledge.

8 1. Attached hereto as Exhibit 1 is a true and correct copy of United
9 States Patent No. 7,585,311, entitled “SYSTEM AND METHOD FOR
10 ATTACHING SOFT TISSUE TO BONE.”

11 2. Attached hereto as Exhibit 2 is a true and correct copy of United
12 States Patent No. 8,100,942 (“the ‘942 patent”), entitled “SYSTEM AND
13 METHOD FOR ATTACHING SOFT TISSUE TO BONE.”

14 3. Attached hereto as Exhibit 3 is a true and correct copy of United
15 States Patent No. 8,109,969 (“the ‘969 patent”), entitled “SYSTEM AND
16 METHOD FOR ATTACHING SOFT TISSUE TO BONE.”

17 4. Attached hereto as Exhibit 4 is a true and correct copy of an article
18 by Peter J. Millett *et al.* entitled “Mattress Double Anchor Footprint Repair: A
19 Novel, Arthroscopic Rotator Cuff Repair Technique, published in *Arthroscopy:*
20 *The Journal of Arthroscopic and Related Surgery*, Vol. 20, No. 8 (Oct. 2008).
21 This is the article by Peter J. Millet listed in Exhibits 5-7 below.

22 5. Attached hereto as Exhibit 5 is a true and correct copy of the
23 January 30, 2007 IDS submitted in application 11/143,007, which issued as the
24 ‘311 patent.

25 6. Attached hereto as Exhibit 6 is a true and correct copy of the
26 December 1, 2011 IDS submitted in the continuation application 13/245620,
27 which issued as the ‘942 patent.

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1 7. Attached hereto as Exhibit 7 is a true and correct copy of the
2 December 1, 2011 IDS submitted in the continuation application 13/245622,
3 which issued as the '969 patent.

4 8. Attached hereto as Exhibit 8 is a true and correct copy of the
5 February 16, 2011 order granting the petition to reexamine the '311 patent.

6 9. Attached hereto as Exhibit 9 is a true and correct copy of 37 C.F.R.
7 § 1.555(a).

8 10. Attached hereto as Exhibit 10 is a true and correct copy of the
9 March 28, 2011 notice of intent to issue an *ex parte* reexamination certificate for
10 the '311 patent.

11 11. Attached hereto as Exhibit 11 is a true and correct copy of the April
12 12, 2011 IDS submitted in Reexamination No. 90/011430.

13 12. Attached hereto as Exhibit 12 is a true and correct copy of the April
14 12, 2011 "Statement of Scott Tate" listed on the IDS forms attached as Exhibits
15 6, 7 and 11.

16 13. Attached hereto as Exhibit 13 is a true and correct copy of the April
17 28, 2011 Petition Under 37 C.F.R. § 1.182 submitted in Reexamination No.
18 90/011430.

19 14. Attached hereto as Exhibit 14 is a true and correct copy of the July
20 15, 2011 Decision On Petition Under 37 C.F.R. § 1.182 in Reexamination No.
21 90/011430.

22 15. Attached hereto as Exhibit 15 is a true and correct copy of excerpts
23 from the Manual of Patent Examining Procedure (MPEP), including MPEP
24 §§ 609.05(b) and 706.02.

25 16. Attached hereto as Exhibit 16 is a true and correct copy of excerpts
26 from the transcript of the December 4, 2012 deposition of Ryan Melnick in this
27 action.

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PROOF OF SERVICE

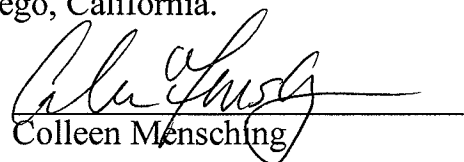
I hereby certify that on May 17, 2013, I caused the **DECLARATION OF SEAN M. MURRAY IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT OF NO INEQUITABLE CONDUCT IN CONNECTION WITH U.S. PATENT NOS. 8,100,942 & 8,109,969** to be electronically filed with the Clerk of the Court using the CM/ECF system which will send electronic notification of such filing to the following person(s):

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I certify and declare under penalty of perjury under the laws of the State of California that I am employed in the office of a member of the bar of this Court at whose direction the service was made, and that the forgoing is true and correct.

Executed on May 17, 2013, at San Diego, California.


Colleen Mensching